

No. 12523

United States
Court of Appeals
For the Ninth Circuit.

OSCAR EWING, Federal Security Administrator,
Appellant,

vs.

ARCHIE F. McLEAN,
Appellee.

SUPPLEMENTAL
Transcript of Record

Appeal from the United States District Court,
for the District of Idaho,
Southern Division.

FILED

SEP 6 - 1950

PAUL P. O'BRIEN, CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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District Court of the United States for the District
of Idaho, Southern Division

Civil Action No. 2593

ARCHIE F. McLEAN,

Plaintiff,

vs.

OSCAR EWING,

Defendant.

CERTIFICATION OF FEDERAL SECURITY
ADMINISTRATOR

I, Joseph E. McElvain, Chairman, Appeals Council, Social Security Administration, Federal Security Agency, under authority conferred upon me by the Federal Security Administrator, hereby certify that the documents annexed hereto constitute a full and accurate transcript of the entire record of proceedings relating to the claim of Archie F. McLean (plaintiff herein) for primary insurance benefits under Title II of the Social Security Act, as amended, and more specifically for a revision of his wage record based on services rendered by such claimant for Albert Miller and Company at Burley, Idaho. Such transcript includes the application for benefits, testimony and evidence upon which the decisions of the referee and the Appeals Council of the Social Security Administration were based.

Fully enumerated, said documents attached hereto are as follows:

(1) Copy of letter dated July 2, 1948, addressed to claimant enclosing copy of Decision of Appeals Council.

(2) Copy of Decision of Appeals Council.

(3) Copy of Receipt of Additional Evidence.

(4) Copy of letter from claimant dated January 7, 1948, to Appeals Council. (Exhibit AC-1.)

(5) Copy of Affidavit subscribed and sworn to by James Allen Fitts. (Exhibit AC-2.)

(6) Copy of letter from claimant dated April 20, 1948, to Chairman of the Appeals Council.

(7) Copy of Affidavit subscribed and sworn to by Horace A. Knight. (Exhibit AC-3.)

(8) Copy of Affidavit subscribed and sworn to by J. W. Anderson. (Exhibit AC-4.)

(9) Copy of Designation of Member of Appeals Council to Receive Additional Evidence.

(10) Copy of letter from Chairman, Appeals Council dated April 8, 1948, addressed to claimant acknowledging receipt of and granting request for review of Referee's Decision.

(11) Copy of Order Extending Time Within Which to File Request for Review of Referee's Decision.

(12) Copy of Request for Review of Referee's Decision.

(13) Copy of letter from referee dated July 8, 1946, addressed to claimant enclosing copy of Decision of Referee.

(14) Copy of Referee's Decision.

(15) Copy of Amended Notice of Hearing.

(16) Copy of Notice of Hearing.

(17) Copy of Request for Hearing.

(18) Copy of Transcript of Hearing held on March 26, 1946.

The following documents are attached to the above-mentioned transcript as exhibits introduced in evidence before the referee:

(19) Copy of letter to Social Security Board from claimant dated April 17, 1944. (Exhibit A.)

(20) Copy of letter to claimant from Social Security Board dated June 7, 1944. (Exhibit B.)

(21) Copy of letter to Social Security Board from claimant dated September 2, 1944. (Exhibit C.)

(22) Copy of letter to Social Security Board from claimant dated February 24, 1945. (Exhibit D.)

(23) Copy of letter to claimant from Social Security Board dated March 6, 1945. (Exhibit E.)

(24) Copy of letter to Social Security Board from claimant dated September 30, 1945. (Exhibit F.)

(25) Copy of letter to claimant from Social Security Board dated October 12, 1945. (Exhibit G.)

(26) Copy of Application for Wage Earner's Primary Insurance Benefits dated October 22, 1945. (Exhibit H.)

(27) Copy of Terminal [Market] Questionnaire dated October 22, 1945. (Exhibit I.)

(28) Copy of Request for Reconsideration dated October 22, 1945. (Exhibit J.)

(29) Copy of letter to claimant from Social Security Board dated November 19, 1945. (Exhibit K.)

(30) Copy of Depositions of Marie C. Buckholz and Louise Franden and Exhibit D-1 attached thereto. (Exhibit L.)

(31) Copy of letter addressed to referee by claimant dated June 11, 1946. (Exhibit M.)

See also copies of letters from Referee, Oscar M. Sullivan, to Albert Miller & Company dated May 13, 1946, and May 3, 1946, respectively, and shown at pages 55 and 56 herein and also copy of Notice of Taking Deposition which was given to the claimant shown at page 57. (The aforesaid pages 55, 56 and 57 are shown in the attached record between Exhibit K and L.)

In Witness Whereof, I have hereunto set my hand and caused the seal of the Federal Security Agency to be affixed in the City of Washington, Dis-

trict of Columbia, this 14th day of October, 1948. By direction of the Federal Security Administrator.

[Seal] /s/ JOSEPH E. McELVAIN,
Chairman, Appeals Council, Social Security Administration, Federal Security Agency.

09:AC

Federal Security Agency
Social Security Administration
Washington

July 2, 1948

In the case of:

Archie F. McLean, Claimant and Wage Earner
Social Security Account No. 518-18-1969

Mr. Archie F. McLean,
114 N. Miller Street,
Burley, Idaho.

Dear Mr. McLean:

There is enclosed herewith a copy of the decision of the Appeals Council on your claim for a revision of your wage record. This decision affirms that of the referee which held that your services for Albert Miller and Company in its Burley warehouse were excepted from employment as agricultural labor and that the wage records kept by the Board (now Administration) shall not be revised to include therein salary received by you for services rendered for the said company in the years 1941 and 1942.

It is believed that the conclusion reached is clearly explained in the enclosed decision. If, however, you have any question with respect to this decision, it is suggested that you contact the nearest field office of the Bureau of Old-Age and Survivors Insurance, Social Security Administration, Federal Security Agency.

If you disagree with the enclosed decision and desire a review of the same, you may file a civil action in the district court of the United States in the judicial district in which you reside within sixty days from this date. For your information as to the action in the district court, your attention is directed to section 205(g) of the Social Security Act, as amended.

Sincerely yours,

JOSEPH E. McELVAIN,
Chairman.

Enclosure

co-Referee Tieburg,
F. O. Twin Falls, Idaho.

Registered 740938. [1*]

* Page numbering appearing at top of page of original certified Transcript of Record.

Federal Security Agency
Social Security Administration
Office of Appeals Council

Case No. 11-126

In the case of:

Archie F. McLean, Claimant and Wage Earner
Social Security Account No. 518-18-1969

Claim for:

Wage Record Revision.

DECISION OF APPEALS COUNCIL

This case is before the Appeals Council on the request of the claimant, Archie F. McLean, for review of the decision rendered on July 8, 1946, by Martin Tieburg, Referee. For good cause shown the Appeals Council granted the claimant, on April 8, 1948, an extension of time within which to file his request for such review. Evidence in addition to that which was before the referee, and which appears to have been unavailable at the time of the referee's hearing, has been received by the Appeals Council and introduced in the record.

In his decision the referee held that the claimant's wage record should not be revised to include remuneration paid him for services he had rendered for Albert Miller and Company. The referee's conclusion was based upon his finding that the services in question were excepted from "employment" as agricultural labor under the provisions of section

209(1) (4) of the Social Security Act, as amended. Such finding, in turn, was based upon the referee's findings that (1) the warehouse of the company in Burley, Idaho, where the claimant was employed, did not constitute a "terminal market," within the meaning of that section of the Act and (2) that the operations performed by the company in its Burley warehouse were performed "as an incident to the preparation of such . . . vegetables [i.e., potatoes] for market," within the meaning of that section. The claimant's contention to the contrary presents the issue before the Appeals Council.

The substance of pertinent sections of the Act is stated in the referee's decision and will not be repeated here. Except as noted below, the referee's statement of facts as set forth in his decision is hereby adopted and included herein by reference. The referee stated that all of the company's sales activities were carried on out of its [2] Chicago office and that all sales were made in carload lots; that cars were loaded in Burley, Idaho, and shipped either directly to jobbers in various cities of the United States or to the company's Chicago warehouse, shipping instructions sometimes being changed while cars were in transit; that "practically none of the potatoes shipped out of the Burley warehouse were consigned to retailers." The evidence received by the Appeals Council subsequent to the referee's decision indicates that approximately sixty per cent of the potatoes which were purchased locally by the management of the com-

pany's warehouse in Burley, Idaho, were shipped to various points in the United States upon directions received from the company's Chicago office and that approximately forty per cent of such potatoes were sold by the manager of the Burley warehouse, under general authority given him by the company, to local produce companies, local, intrastate, and interstate transportation companies, restaurants, stores, and private individuals; that most of the potatoes which were sold locally from the warehouse had been purchased directly from the growers, having been sorted and graded in the growers' cellars and were not washed or sorted in the warehouse.

The additional evidence just described was submitted by the claimant for the purpose of establishing that the Burley warehouse where he was employed was a "terminal market," it being his contention, apparently, that such conclusion is required by the fact that an appreciable portion, namely, forty per cent, of the potatoes purchased for the company by the Burley warehouse management was sold locally rather than being shipped directly or indirectly (i.e., through the company's Chicago warehouse) to wholesalers or dealers elsewhere for subsequent resale. In our opinion, the operations of the Burley warehouse must be considered as a whole and the fact that sixty per cent of the potatoes bought through that warehouse were sold to wholesalers and dealers located at points far distant supports the conclusion that such points, rather than the Burley warehouse, constituted the "terminal

market” for its output, within the meaning of the Act. If it is considered proper to consider the local sales made at Burley separately from the total, it would seem also that consideration should be given to the fact, which is established by the record, that the services performed by the claimant, as stated in the referee’s decision, “consisted of approximately forty-five per cent in washing operations and fifty-five per cent in grading operations at the Burley warehouse.” Since the new evidence submitted by the claimant shows that neither of these operations was performed in the warehouse respecting potatoes sold locally, the conclusion would seem to be inevitable that his services related solely to the potatoes (sixty per cent of the total handled) which were shipped directly or indirectly to wholesalers and dealers located at distant [3] points from Burley, Idaho, and that his services, therefore, were performed prior to the delivery of the potatoes to a terminal market, and “as an incident to the preparation of such . . . vegetables for market.”

It is the position of the Social Security Administration that the handling, packing, packaging, grading, and preparing of fresh fruits and fresh vegetables in their raw or natural state prior to the sale thereof, or delivery thereof for shipment or sale, to a wholesaler or dealer, in the employ of commercial handlers who purchase the fruits or vegetables from the producer, are excepted services is under section 209(1)(4) of the Act. In the light of the facts as established by the record in this case and as set

forth in the foregoing statement and in the referee's decision, the finding of the referee that the services performed by the claimant for Albert Miller and Company in its Burley, Idaho, warehouse, were excepted from employment as agricultural labor is hereby adopted, and the referee's decision that the wage records kept by the Board (now Administration) shall not be revised to include therein remuneration paid the claimant for services rendered by him for the said company in the years 1941 and 1942 is hereby affirmed.

Date: July 2, 1948.

OFFICE OF APPEALS
COUNCIL,

/s/ JOSEPH E. McELVAIN,
Chairman. [4]

Federal Security Agency
Social Security Administration
Office of Appeals Council

Case No. 11-126

In the case of:

Archie F. McLean, Claimant and Wage Earner
Social Security Account No. 518-18-1969

Claim for:

Wage Record Revision.

RECEIPT OF ADDITIONAL EVIDENCE

The above case having been referred to me by the Appeals Council for the receipt of additional evidence, which consists of a letter, dated January 7, 1948, from Archie F. McLean addressed to Social Security Agency, Social Security Board, Office of Appeals Council, c/o Twin Falls Social Security Agency, Twin Falls, Idaho; an affidavit signed by James Allen Fitts, dated January 7, 1948; an affidavit signed by Horace A. Knight, dated April 20, 1948; and an affidavit signed by J. W. Anderson, dated April 14, 1948, designated Exhibits AC-1, AC-2, AC-3, and AC-4, respectively, the same is hereby received by me and made a part of the record of this case.

Date: April 30, 1948.

/s/ ERNEST R. BURTON,
(Title) Member, Appeals Council. [5]

Case No. 11-126

Exhibit AC-1

January 7, 1948

Social Security Agency,
Social Security Board,
Office of Appeals Council,
c/o Twin Falls Social Security Agency,
Twin Falls, Idaho.

Re: Archie F. McLean, Claimant,
SS No. 518-18-1969,
Case No. 11-126.

Gentlemen:

I have discovered new evidence which is pertinent to the Referee's decision rendered by Martin Tieburg, Referee, dated July 8, 1946. I have found the Social Security Board and Appeals Council fair and reasonable in their decisions and because of this I am sure that based upon the newly discovered evidence, that you will reconsider my case and reopen the same for a hearing of this new evidence. To support this evidence, I am submitting at this time an Affidavit by James Allen Fitts, which substantiates the showing that my employment at the Albert Miller and Co., at Burley, Idaho, was covered employment, and further that the warehouse of said Albert Miller and Co., where I was employed at Burley, was a terminal warehouse, and therefore my employment should not be excepted from the Security Act. The essential question at

the last hearing was whether or not the Burley warehouse of the Company was a terminal market. I can substantiate by direct evidence through Mr. Fitts' testimony that the same is a terminal market and the Affidavit is submitted in support of this contention.

This evidence was not introduced by me at the original hearing because I didn't understand the amended portion of the Security Act relative to this type of employment, and further that I was not informed of the exact transaction engaged in by the Burley warehouse of the Company, and further that Mr. Fitts was not in or around Burley at the time, but since his return to Burley, this evidence has been called to my attention.

I respectfully request that based upon this information, that I be granted a re-hearing for the reasons above outlined.

Very truly yours,

/s/ ARCHIE F. McLEAN,
Claimant. [6]

Case No. 11-126

Exhibit AC-2

518-18-1969

AFFIDAVIT OF JAMES FITTS

State of Idaho,
County of Cassia—ss.

James Allen Fitts, being first duly sworn, deposes
and says :

That he is a citizen of the United States; that he has been a resident of the State of Idaho for approximately 40 years; that he has been a resident of Cassia County, State of Idaho, for approximately 19 years; that at various times of his life he has been employed as Manager for produce companies and has acted individually as a produce buyer and shipper and has further been produce inspector for the United States Government for approximately 15 years; that because of such experience and background, he was and is qualified as an office manager, produce buyer and seller; that for approximately 4 years he was employed by the Albert Miller and Co., a foreign corporation, at Burley, Cassia County, State of Idaho, as Warehouse Manager, which position entailed the buying, transporting, washing, sorting, storing, selling and shipping of potatoes and all other incidentals including office management of the said warehouse at Burley, Idaho, for said Albert Miller and Co.; that such position further entailed the employing and discharging of employees neces-

sary for the continuance of said produce operation;

And further, that affiant was employed by said Albert Miller and Co., during the months of November and December, 1941; January, February, March, April, May, September, October and November, 1942; that during the above-mentioned months and at all times while he was employed by said Albert Miller and Co., affiant was authorized by said Albert Miller and Co., to purchase potatoes and to sell potatoes; that approximately 60% of the potatoes which he purchased for the Albert Miller and Co. were shipped to various points in the United States upon directions emanating from the Albert Miller and Co., at Chicago, Illinois; that affiant followed said instructions and shipped said potatoes upon receiving orders from said company. However, approximately 40% of said potatoes which he purchased and which were sorted in the farmers' cellars, by and for the Albert Miller and Co., were sold from the warehouse at Burley, Idaho, by this affiant to local produce companies, local and interstate as well as intrastate transportation companies, stores, restaurants, and private individuals; and further, that the majority of the potatoes which were sold by the affiant locally were potatoes which had been purchased from farmers and which had not been washed nor sorted in the warehouse of the Albert Miller and Co., warehouse, at Burley, Idaho, being potatoes which were purchased directly from the farmer and having been sorted and graded in the farmer's

cellar; Affiant further states that he was empowered and authorized by the Albert Miller and Co. to so sell said potatoes locally, the price being left to the judgment of this affiant by said Albert Miller and Co.; and further, affiant states that in his selling of potatoes locally for the Albert Miller & Co., he was not only authorized but encouraged to so sell the said potatoes, by the authorities of the Albert Miller and Co.;

Affiant further states that during the above-mentioned months, while he was employed as Manager of the Burley warehouse for the Albert Miller and Co., there was employed at said warehouse at Burley, Idaho, one Archie F. McLean; that the said Archie F. McLean was employed as labor during the said months by said Company and was paid by said Company appropriate wages for the services rendered to the said Albert Miller and Co.; that Archie F. McLean worked in and about the warehouse and assisted in various types of jobs therein.

Dated this 7th day of January, 1948.

/s/ JAMES ALLEN FITTS.

Subscribed and sworn to before me this 7th day of January, A.D. 1948.

/s/ DEAN KLOEPFER,

Notary Public in and for the State of Idaho, Residing at Burley, Idaho. [7]

114 N. Miller St.,
Burley, Idaho,
April 20, 1948.

Mr. Joseph E. McElvain, Chairman,
Federal Security Agency,
Social Security Administration,
Washington 23, D. C.

Re: File No. 09:AC

In the case of Archie F. McLean, Claimant and
Wage Earner,
Social Security Account No. 518-18-1969

Dear Mr. McElvain:

Regarding your letter of April 8, 1948, I am requesting that the Appeals Council proceed with the review of my case. Enclosed you will find two Supplemental Affidavits relative to the subject matter involved. I request that the Appeals Council consider the same. The Affidavits could not be obtained prior to this time as the affiants were not in and around Burley and a search by me finally disclosed their whereabouts and the said Affidavits were then obtained.

I further request that the Council consider my case on the information before them, as it is impossible for me to appear in person or to employ counsel. Kindly keep me advised.

Very truly yours,

/s/ ARCHIE F. McLEAN. [S]

AFFIDAVIT OF HORACE A. KNIGHT

State of Idaho,
County of Cassia—ss.

Horace A. Knight, being first duly sworn, deposes and says:

That he is a citizen of the United States; that he has been a resident of the State of Utah, County of Weber, for approximately 47 years; that at various times in his life he has been engaged in the business of produce buyer and generally dealing in the produce business for the past 25 years;

Further, Affiant states that during the months of November and December, 1941, January, February, March, April, May, September, October and November, 1942, he purchased at various times from the Albert Miller and Co. several truck loads of potatoes; that affiant knows that the local office, located at Burley, Idaho, from which he purchased said potatoes, of the Albert Miller and Co., was authorized to purchase and sell potatoes;

Affiant further states of his own knowledge that during the above-mentioned months, during which he at various times purchased potatoes from the Albert Miller and Co. warehouse at Burley, Idaho, that there was employed at said warehouse at Burley, Idaho, one Archie F. McLean; that the said Archie F. McLean was employed as a laborer during

the said months by said Company and was paid by said Company appropriate wages for the services rendered to the said Albert Miller and Co.; that the said Archie F. McLean worked in and about the warehouse and assisted in various types of jobs therein.

Dated this 20th day of April, A.D. 1948.

/s/ HORACE A. KNIGHT.

Subscribed and sworn to before me this 20th day of April, A.D. 1948.

/s/ DEAN KLOEPFER,

Notary Public in and for the State of Idaho, Residing at Burley, Idaho.

My commission expires March 19, 1949. [9]

Case No. 11-126

Exhibit AC-4

AFFIDAVIT OF J. W. ANDERSON

State of Idaho,

County of Cassia—ss.

J. W. Anderson, being first duly sworn, deposes and says:

That he is a citizen of the United States; that he has been a resident of the State of Idaho for approximately 30 years, and a resident of Cassia County, Idaho, for approximately 30 years; that at various times in his life he has been employed as foreman, produce buyer and generally dealing in the produce business, for several produce companies during the last 25 years; that for approximately 10 years he was employed by the Albert Miller and Co., a foreign corporation, at Burley, Cassia County, Idaho, as foreman, in charge of the warehouse, sorting, loading of cars, loading trucks and general duties as a warehouse foreman; that affiant was well qualified for the duties of a warehouse foreman;

Further, affiant was employed by said Albert Miller and Co. during the months of November and December, 1941, January, February, March, April, May, September, October and November, 1942; that during the above-mentioned months and at all times while he was employed by said Albert Miller and Co., at Burley, Idaho, affiant knows that the local office at Burley was authorized by the Albert Miller

and Co. to purchase potatoes and to sell potatoes; that approximately 60% of the potatoes which were purchased locally for the Albert Miller and Co. were shipped to various points in the United States upon directions emanating from the Albert Miller and Co., at Chicago, Illinois; that instructions were followed and potatoes were shipped upon receiving orders from the said Company; that approximately 40% of said potatoes which were purchased and which were sorted in the farmers' cellars, by and for the Albert Miller and Co., were sold from the warehouse at Burley, Idaho, by the Burley warehouse to local produce companies, local and interstate as well as intrastate transportation companies, restaurants, stores and private individuals; that further, the majority of the potatoes which were sold by the Burley warehouse locally were potatoes which had been purchased from farmers and which had not been washed nor sorted in the warehouse of the Albert Miller and Co. warehouse at Burley, Idaho, being potatoes which were purchased directly from the farmers and having been sorted and graded in the farmers' cellars; Affiant further states that he knows that the local Manager was empowered and authorized by the Albert Miller and Co. to so sell said potatoes locally, the price being left to the judgment of said Manager by the said Albert Miller and Co.; and further, affiant states that in selling of potatoes locally for the said Albert Miller and Co., the Manager was not only authorized to so sell the said potatoes, but was also encouraged by the

said Albert Miller and Co., in the selling of the potatoes locally;

Affiant further states that during the above-mentioned months, during which he was employed as warehouse foreman of the Burley warehouse for the Albert Miller and Co., there was employed at said warehouse at Burley, Idaho, one Archie F. McLean; that the said Archie F. McLean was employed as laborer during the said months by said Company and was paid by said Company appropriate wages for the services rendered to the said Albert Miller and Co.; that the said Archie F. McLean worked in and about the warehouse and assisted in various types of jobs therein.

Dated this 14th day of April, A.D. 1948.

/s/ J. W. ANDERSON.

Subscribed and sworn to before me this 14th day of April, 1948.

/s/ DEAN KLOEPFER,

Notary Public in and for the State of Idaho, Residing at Burley, Idaho.

My commission expires March 19, 1949. [10]

Federal Security Agency
Social Security Administration
Office of Appeals Council

Case No. 11-126

In the case of:

Archie F. McLean, Claimant and Wage Earner
Social Security Account No. 518-18-1969

Claim for:

Wage Record Revision.

DESIGNATION OF MEMBER OF APPEALS
COUNCIL TO RECEIVE ADDITIONAL
EVIDENCE

It appearing that there is available additional material evidence in connection with the above case which may affect the decision of the Appeals Council, Ernest R. Burton, Member of the Appeals Council, is hereby appointed to receive the offered evidence, and to make same a part of the record in this case.

Date: April 30, 1948.

OFFICE OF APPEALS
COUNCIL,

/s/ JOSEPH E. McELVAIN,
Chairman. [11]

09:AC

Federal Security Agency
Social Security Administration
Washington

April 8, 1948

In the case of:

Archie F. McLean, Claimant and Wage Earner
Social Security Account No. 518-18-1969

Mr. Archie F. McLean,
114 N. Miller Street,
Burley, Idaho.

Dear Mr. McLean:

This acknowledges receipt of your request for review of the decision rendered by Mr. Martin Tieburg, the referee who conducted the hearing on your claim for revision of Board's wage records. The Appeals Council grants your request for review.

The regulations of the Social Security Administration, Federal Security Agency, provide that you may, if you desire, appear and discuss your case before the Appeals Council, in Washington, D. C., in person or by someone whom you appoint to represent you. You may also file with the Council a brief or other written statement of your contentions. You are not required, however, to appear before the Appeals Council or to submit a brief or other statement, and the merits of your case will receive the same careful consideration by the Coun-

cil whether you appear before it or submit a statement or do neither.

If you decide to appear before the Appeals Council in person, or by a representative, please advise by letter within fifteen days so that we can notify you of the date when the Appeals Council will hear your argument. If you file a brief, it should be mailed to this office within twenty days from the date of this notice.

The decision of the Appeals Council will be based upon the record unless additional evidence is accepted. Such additional evidence, however, will not be accepted or considered by the Appeals Council unless there is a good showing beforehand that it is material and may affect the Council's decision.

Sincerely yours,

JOSEPH E. McELVAIN,
Chairman.

cc—Referee Tieburg,

F. O., Twin Falls, Idaho. [12]

Federal Security Agency
Social Security Administration
Office of Appeals Council
Case No. 11-126

ORDER EXTENDING TIME WITHIN WHICH
TO FILE REQUEST FOR REVIEW OF
REFEREE'S DECISION

In the case of:

Archie F. McLean, Claimant and Wage Earner
Social Security Account No. 518-18-1969

Claim for:

Revision of Board's Wage Records.

It appearing from a letter dated January 7, 1948, addressed to the Office of the Appeals Council and signed by the claimant, Archie F. McLean, that he is able at this time to present additional material evidence which was unavailable at the time of the hearing held before the referee and that he wishes the referee's decision which was rendered on July 8, 1946, to be reviewed by the Appeals Council in the light of such additional evidence, it is the conclusion of the Appeals Council that the time for filing a request for review of the referee's decision should be extended, and the claimant's request for review which was filed with the San Francisco, California, area office on March 25, 1948, is hereby accepted.

OFFICE OF APPEALS
COUNCIL,
/s/ JOSEPH E. McELVAIN,
Chairman.

Date: April 8, 1948. [13]

Federal Security Agency
Social Security Board
Office of Appeals Council

In the case of:

Archie F. McLean, Claimant and Wage Earner
Social Security Account No. 518-18-1969

Claim for:

Primary Insurance Benefits.

REQUEST FOR REVIEW OF REFEREE'S
DECISION

To the Appeals Council:

I disagree with the referee's decision on the above claim and request that the Appeals Council review it.

Remarks: (If you wish you may use this space for statement of reasons for disagreement.)

The claimant states in a letter addressed to the Social Security Administration dated January 7, 1948:

"I have discovered new evidence which is pertinent to the Referee's decision rendered by Martin Tieburg, Referee dated July 8, 1946. I have found the Social Security Board and Appeals Council fair and reasonable in their decisions and because of this I am sure that based

upon the newly discovered evidence that you will re-consider my case.”

“* * *”

ARCHIE F. McLEAN.

Date: Jan. 8, 1948.

Acknowledgment of Request for Review of
Referee's Decision

Your request for review of the referee's decision in this case was filed on March 25, 1948, at San Francisco, Calif.

The Chairman of the Appeals Council will notify you of the Council's action on your request.

(For the Social Security Board.)

By /s/ JOSEPH C. COLUMBUS,
Chief, Area Office,
San Francisco, Calif.

To: Archie F. McLean,
114 N. Miller St.,
Burley, Idaho. [14]

09:AC

09:RO:XII

Case No. 11-126

NOTICE OF DECISION

785 Market Street,
San Francisco 3, California,
July 8, 1948.

Mr. Archie F. McLean,
114 North Miller,
Burley, Idaho.

Dear Mr. McLean:

Enclosed is a copy of my decision in your case which is that the wage records kept by the Board shall not be revised to include therein salary received by you for services rendered for Albert Miller and Company.

If you disagree with my findings of fact or application of the law, as stated in this decision, you may request that it be reviewed by the Appeals Council of the Social Security Board. Such request, however, must be made in writing and filed within thirty days from the date of this letter, and may be filed at any field office of the Social Security Board.

If you have any question about this decision, or desire further information regarding its review, I

suggest that you write to or call at the nearest field office of the Social Security Board.

Sincerely yours,

/s/ MARTIN TIEBURG,
Referee.

Enclosure:

cc—Appeals Council, Washington, D. C.
San Francisco Area Office
Field Office, Twin Falls, Idaho
Referee Sullivan [15]

Federal Security Agency
Social Security Board
Office of Appeals Council
Case No. 11-126

In the case of:

Archie F. McLean, Claimant and Wage Earner
Social Security Account No. 518-18-1969

Claim for:

Revision of Board's Wage Records.

REFEREE'S DECISION

Archie F. McLean, claimant herein, disagreed with a determination of the Bureau of Old-Age and Survivors Insurance of the Social Security Board whereby wage credits for certain services were disallowed, and filed a request for a hearing before a

referee of the Social Security Board. Such a hearing was held in Burley, Idaho, on March 26, 1946, before the undersigned referee. Claimant was present and participated in the hearing. Thereafter, and on May 22, 1946, a deposition was taken before Referee Oscar M. Sullivan in Chicago, Illinois, at which deposition Marie C. Buckholz and Louise Franden were the witnesses, and said deposition was thereafter introduced into the record of this matter.

The claimant instituted these proceedings as a wage revision proceeding on September 2, 1944. Thereafter, and in 1945, he filed an application for primary insurance benefits for the purpose of freezing his wage record. This latter application was never acted upon, as it was neither allowed nor disallowed by the Bureau. Under such circumstances the referee will devote this decision to a determination of the question of coverage of certain services rendered by the claimant for the Albert Miller and Company in 1941 and 1942, and will not make a determination on the fully insured status of the claimant. Such limitation of this decision will nowise affect the claimant generally, as the record discloses that even if these services were held to be in covered employment and credit given therefor, in addition to the other credits which the claimant already has on his wage record, they would not constitute him a fully insured individual at the time of the hearing in this matter, since he required approximately 17 quarters of coverage for a fully insured

status and had only 11 in addition to those in question here which total only 5.

The claimant contends that his services for Albert Miller and Company were rendered in covered employment and were not excepted from employment as agricultural labor. That presents the issue before the referee. [16]

Section 209(a) of the Social Security Act, as amended, defines "wages" as "... remuneration for employment. . . ."

Section 209(b) defines the term "employment" as "... service performed . . . by an employee for the person employing him . . . except—(1) Agricultural labor (as defined in subsection (1) of this section)."

Section 209(1) reads in part as follows:

"The term 'agricultural labor' includes all service performed—

* * *

"(4) In handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; but only if such service is performed as an incident to ordinary farming operations or, in the case of fruits and vegetables, as an incident to the preparation of such fruits or vege-

tables for market. The provisions of this paragraph shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption."

The claimant in the month of November, 1941, commenced rendering services for Albert Miller and Company in its Burley, Idaho, warehouse or packing shed. The Albert Miller and Company, a corporation, had its principal office in Chicago, Illinois, and is designated as a "carlot potato distributor." All of its sales activities were carried on out of its Chicago office. In the Burley office or branch the activities consisted of the buying, sorting, grading, washing, packaging, storing, and shipping of potatoes in carload lots upon direction and advice from the home office in Chicago. The principal activity which the claimant engaged in consisted of approximately 45 per cent in washing operations and 55 per cent in grading operations at the Burley warehouse. The potatoes handled by the claimant had been purchased from the farmers or growers by agents of the Albert Miller and Company, hereinafter called the company. Usually they were purchased by such agents after they had been placed in the farmer's cellar. They were either purchased and paid for as a lot as they stood in the cellar, or

were purchased and paid for after grading into U. S. No. 1's and U. S. No. 2's, either in the farmer's cellar or in the company's warehouse. The record does not disclose exactly what percentage of the potatoes were sorted and graded in the farmer's cellar and what portion were sorted and graded in the company's warehouse, and it is not unreasonable to assume that approximately one-half of the potatoes handled were [17] purchased and paid for on the basis of measurement or sorting and grading in the farmer's cellar, and the other half paid for on the basis of sorting and grading in the warehouse. Regardless of how they were purchased and paid for, they were all brought into the warehouse for the purpose of further sorting and grading and washing. The first function of the warehouse operation was to feed all of the potatoes through the washer, then to sort them into two grades above noted. The U. S. No. 1's were then packed in 100-pound sacks with the exception of the choice and largest potatoes which were packed in 10-pound and 25-pound sacks. Immediately after such packing in sacks, they were either shipped in carload lots to various United States markets as directed by the home office, or were stored in the basement of the company's warehouse awaiting developments in the potato market. All shipments that were made were in carload lots and were made directly to jobbers in various cities with the exception of some shipments which were consigned from the warehouse to Chicago, and shipping instructions were changed and

they were diverted to other cities and markets in transit. It is significant that practically none of the potatoes shipped out of the Burley warehouse were consigned to retailers.

The claimant, as above stated, entered into such services for the company in November, 1941, and was employed and was paid salary in the following months in the following sums:

Month	Amount of Earnings
November, 1941	\$ 67.75
December, 1941	42.50
January, 1942	87.25
February, 1942	62.00
March, 1942	108.08
April, 1942	114.40
May, 1942	26.95
September, 1942	133.12
October, 1942	264.76
November, 1942	92.22

The referee finds from the foregoing that the claimant's earnings were \$110.25 in the calendar quarter ending December 31, 1941; the sum of \$257.33 in the calendar quarter ending March 31, 1942; the sum of \$141.35 in the calendar quarter ending June 30, 1942; the sum of \$133.12 in the

calendar quarter ending September 30, 1942; and the sum of \$356.98 in the calendar quarter ending December 31, 1942.

Under the provisions of section 209(1)(4), the services rendered by the claimant would not be excepted from "employment" if (1) the Burley warehouse of the company is a "terminal market," or (2) if the work performed at the Burley warehouse was not "an incident to the preparation of such * * * vegetables for market," but was in the order of a process subsequent to the preparation for market. [18]

From the facts disclosed by this record, it is quite apparent that the Burley warehouse of the company was not a terminal market, and the referee so finds. The record discloses that such warehouse was used primarily for the purpose of receiving potatoes from growers, processing them, and shipping them thereafter to other cities, at the end of which latter shipment such potatoes did ultimately reach their terminal market. In these latter cities to which they were shipped they were placed in the hands of jobbers who received them in carload lots from the company and then distributed them to various retailers and dealers, who in turn distributed them to the consuming public. Such being the case, it will now be necessary to consider the question of whether or not the company's operations at the Burley warehouse should or should not be considered as an incident to the preparation of the potatoes for market.

It is customary in the production of potatoes in the district in which the company's warehouse is situated for the farmers to harvest their potatoes and place them in storage cellars. At that point they are not as yet ready for distribution to the consuming public, as potatoes there raised are sold in two grades, to wit: U. S. No. 1's and U. S. No. 2's. The farmer stores them in bulk without sorting or grading them. The potatoes are not sorted or graded until they come into the hands of the company. The company sorts and grades them either in the farmer's cellar or in its own warehouse after trucking the potatoes to its warehouse from the farms at its own expense. The record discloses that upon taking the potatoes from the farmer, and in some cases previous to the actual taking of said potatoes from the farm to the warehouse, the title to the potatoes passes to the company, and through all stages of the company's operations the potatoes handled are the property of the company. After said potatoes are brought into the warehouse either in bulk or in sacks, they are put through a washing process, and then again sorted and graded. All of the U. S. No. 1's are then packaged in either 100-pound sacks or 10- and 25-pound sacks, and some of the No. 2's are packaged in 100-pound sacks and others of the No. 2's are placed in bins in bulk awaiting shipment. At certain seasons of the year some of these potatoes are placed in storage in the warehouse, which warehouse has a capacity of approximately 50,000 sacks in its basement. They remain there for

some indefinite time and are shipped from time to time as orders and directions for such shipment are received from the Chicago office. It is evident from the facts in this case, and the referee finds, that potatoes handled by the company in its Burley warehouse were not fully prepared for market until they were washed and finally sorted and graded, and it is therefore the finding of this referee that the operations of the company in its Burley warehouse were incident to the preparation of potatoes for market.

It is therefore the further finding of this referee that the services performed by the claimant for Albert Miller and Company in its Burley warehouse were excepted from employment as "agricultural labor."

It is the decision of this referee that the wage records kept by the Board shall not be revised to include therein salary received by claimant for services rendered for Albert Miller and Company.

Date: July 8, 1946.

/s/ MARTIN TIEBURG,
Referee. [19]

Case No. 11-126

Federal Security Agency
Social Security Board
Office of Appeals Council

In the case of:

Archie F. McLean, Claimant and Wage Earner
Social Security Account No. 518-18-1969

Claim for:

Primary Insurance Benefits.

AMENDED NOTICE OF HEARING

To: Mr. Archie F. McLean,
114 North Miller,
Burley, Idaho.

The hearing in this case which was scheduled for March 26, 1946, at Commissioner's Room, City Hall, Burley, Idaho, will be held instead on the 26th day of March, 1946, at 11:30 a.m. o'clock in Mayor's Chambers of City Hall Building, Burley, Idaho.

Date: March 20, 1946.

MARTIN TIEBURG,
Referee.

785 Market Street,
San Francisco 3, Calif.

Case No. 11-126

Federal Security Agency
Social Security Board
Office of Appeals Council

In the case of:

Archie F. McLean, Claimant and Wage Earner
Social Security Account No. 518-18-1969

Claim for:

Primary Insurance Benefits.

NOTICE OF HEARING

To: Mr. Archie F. McLean,
114 North Miller,
Burley, Idaho.

In response to a written request in the above case, a hearing will be held by the undersigned, a referee of the Social Security Board, on the 26th day of March, 1946, at 11:30 a.m. o'clock in Commissioner's Room of City Hall Building, Burley, Idaho.

If you cannot be present at that time please
notify me at once.

Copies of papers on file with the Social Security Board which are relevant to the issues, and which may be submitted as evidence at the hearing, will be available for your inspection at the time of the hearing.

You may present at the hearing any evidence on

the issues, either in the form of written documents or the oral testimony of witnesses.

You may call upon the manager of the Field Office located at Twin Falls, Idaho, for information and advice with regard to the hearing.

Remarks:

Issue:

Whether wage earner's services for Albert Miller & Company were excepted from "employment" by section 209(b)(1) of the Social Security Act, as amended.

Date: March 12, 1946.

MARTIN TIEBURG,

Referee,

785 Market Street,
San Francisco 3, Calif.

Federal Security Agency
Social Security Board
Office of Appeals Council

REQUEST FOR HEARING

In the case of:

Archie F. McLean, Claimant and Wage Earner
Social Security Account No. 518-18-1969

Claim for:

Primary Insurance Payments.

To the Social Security Board:

I disagree with the determination made on the above claim, and therefore request a hearing before a referee of the Social Security Board.

Remarks: (If you wish you may use this space for statement of reasons for disagreement.)

I was told the work was covered. I cannot agree with ruling affecting coverage after I worked for one year under coverage in this questioned employment.

Date: 12-18-45.

/s/ ARCHIE F. McLEAN,
Claimant,

114 North Miller,
Burley, Idaho. [22]

(Transcript of the hearing in connection with the claim of Archie F. McLean, Social Security Account No. 518-18-1969, for primary insurance benefits, which was held in Mayor's Chambers, City Hall Burley, Idaho, before Martin Tieburg, Referee, on March 26, 1946. The claimant was present and participated in the hearing.)

Q. Your name is Archie F. McLean?

A. That's right.

Q. Is your correct address 114 North Miller, Burley, Idaho? A. 114?

Q. That's right. A. 114 North Miller.

Q. Mr. McLean, you were employed at one time by the Albert Miller and Company?

A. That's right.

Q. And that employment was in Burley, Idaho?

A. That's right.

Q. What period were you employed by them—in what period—what dates?

A. I started to work sometime along I think about November, 1941.

Q. And when did you end your employment there?

A. Well, we quit—we got through, I think, about the first week in May, 1942.

Q. You worked in May?

A. Well, just 2 or 3 days.

Q. So we have involved here the question of employment in November, 1941, December, 1941, and

then the first 4 months of 1942 and a [23] few days in May, 1942? A. That's correct.

Q. Where did you perform your services?

A. In the warehouse.

Q. And what kind of work were you doing?

A. Well, we were sorting potatoes.

Q. Sorting potatoes?

A. I would like to go back just a little farther if I'm not out of place.

Q. First let's get the answer to that question.

A. Yes, we were sorting potatoes.

Q. Now, these particular potatoes that you worked on, had they been handled by any other concern other than the grower that grew those potatoes previous to the time they came to this warehouse? A. Yes, yes, they had.

Q. And what condition were they in when you worked on them? Were they in the same condition in which the grower had delivered them?

A. These potatoes were bought by Albert Miller from the grower and they sent a crew out and sorted them U. S. No. 1 and No. 2.

Q. Where did they send the crew to?

A. Out to the farmer's cellar.

Q. Were you——

A. No, I didn't have anything to do with that. Albert Miller handles the potatoes different from most of the dealers. The big per cent sends a crew out and sorts them and then they haul them in and put them on the cars. But Albert Miller was a different outfit. They went out here to the country and bought these potatoes U. S. No. 1 and No. 2 in

the farmer's cellar, and paid him for them No. 1 and No. 2. They belonged to Albert Miller. They were out of the hands of the grower entirely. Then Albert Miller brings them into this warehouse where I worked, run them through the washer, sorts them and repacks them, some of them in 100-pound sacks, and the big ones, the 8- and 10-ounces, put those in little bags, most of them 10-pound bags, some 25. They run them through this washer and washed them, and that's the work that I done. They are out of the hands of the grower entirely. They are in the hands of the speculator. Not only that, but in the fall of the year they had a big warehouse that would hold probably 50,000 sacks in the basement, and they went out to the farmers and bought these potatoes and paid for them.

Q. When did they pay for the potatoes?

A. A good many times before they even left the cellar. Sometimes they left them maybe a week or so, and a farmer maybe would come in and wanted his money and they just paid for them. These potatoes in the fall of the year they done the same thing with them they done with these we sorted. They sorted them in the country and brought them in and stored them in the warehouse, and a lot of those potatoes stayed in that warehouse till spring, and we had to sort them again. Those potatoes was ready for the market when they were sorted out here in the country. They were U. S. No. 1 and U. S. No. 2. Most of the 2's we didn't have to do too much to them because they didn't put them in the bags so much. [25]

Q. Do you have any information as to whom Miller sold his potatoes to?

A. Shipped his potatoes all out.

Q. From Burley where would they be shipped?

A. Their head office was in Chicago, you see, and they would get their wires from Chicago to this local here, and maybe they wanted some potatoes in Oklahoma or Texas or some place, and they were billed from here to that destination.

Q. Did they store a great part of the potatoes that went through the firm here in their Burley warehouse?

A. No, they just filled it in the fall of the year, probably 50,000 sacks or something like that, and during the wintertime bought these potatoes from the farmer and they resorted, washed them and resorted and sized them in order to get more money out of the potatoes.

Q. Well, what time of the year is potatoes usually shipped in?

A. What time? Well, early potatoes start about the first of September, and we ship potatoes until way on into May.

Q. And when do they buy those potatoes they store?

A. They are the late potatoes here in October sometime.

Q. And how long do they store those?

A. It just depends a good deal on the season and how they are keeping, or it might depend some on how urgent the demand was for them and

whether they could buy potatoes in the country or not.

Q. Did they always keep a large supply of potatoes stored?

A. In the two seasons—I worked the next fall, too. In the [26] two seasons I worked there they filled the warehouse in the basement. I worked in the fall of 1942.

Q. Where did you get your information that they purchased the potatoes from the growers?

A. Where did I get that information?

Q. Yes.

A. Before I worked in the warehouse I used to sort in the country. I worked down in this Eden country and Hansen. And sometimes in case it wasn't handy for the buyer to go down there and he kind of left it up to us for to buy these potatoes, so that if the farmer come to us and wanted to sell his potatoes he left it up to us to buy these potatoes so we could kind of keep ourselves busy in case he didn't come down there.

Q. Do you know whether or not the price that was paid to the farmer depended upon the amount of salary that the Miller Company had to pay for cleaning and sorting, or was it just a flat price according to what the Miller Company could buy the potatoes for from the farmer?

A. The way they buy potatoes here, they pay so much for these potatoes sorted U. S. No. 1 and No. 2, and the buyer pays for the sorting and the sacks and the transportation.

Q. Who brought the potatoes from the farmer's property to the warehouse?

A. Who hauled them in?

Q. Yes.

A. Well, they usually had some trucks working there for them. [27]

Q. For who?

A. For Miller. But lots of times they had to hire, you know, outside trucks.

Q. Did the farmers ever bring them in themselves?

A. Well, the farmer didn't bring them in—what I mean, it wasn't in the contract for the farmer to bring them in, but some farmers owned trucks, understand, and Albert Miller hired them to bring in potatoes.

Q. What percentage of the potatoes that went through that warehouse were shipped ultimately to Chicago for the Albert Miller Company?

A. Well, I couldn't say. They were diverted all over. Whenever they needed them they were diverted. They might go to Kansas City, to Omaha, to Denver, you understand, and be diverted. They run these potatoes, a lot of them, unsold, but they diverted a lot of them in transit.

Q. Do you have any additional facts or evidence which would indicate that this was employment and was not exempt as agricultural labor which you wish to present at this time?

A. At the time, the first year I went to work for Albert Miller—I worked for an Idaho Falls outfit

down here during the harvest season, and when the harvest season was over they picked out their crews for to go into the country, and I being one of the older men they didn't pick me. And so I came up town along about 10 o'clock one morning and was sitting in the pool hall and this man, the manager of this Albert Miller Company, he came in, and he said to me, "Ain't you working today?" And I said no. He said, "I got a job over here for you if you want it." [28] And I said, "I don't want it if it isn't steady and if it isn't under the coverage of the social security." And he said, "It's steady and it's under coverage." So I said all right. And he said, "Have you got your social security card?" And I said yes. He said, "Go get it." So I went down to the house to get it, but my wife had misplaced it, and when I come back I told him, and he wouldn't let me go to work till I did find it. So the next morning I found it and I went to work. The next year, in the fall of 1942, I went to work the day after Labor Day, and the foreman—the manager wasn't there but the foreman was—and the foreman come along and he said, "Where's your social security card?" And I said, "Well, I didn't bring it. You've got a record of it." And he said, "You bring it in at noon." I said, "They've got my number and my record someplace here." He said, "That don't make any difference; you bring it." So I brought it at noon.

Q. Did they ever make deductions from your

salary at Albert Miller for old-age insurance and for State unemployment insurance?

A. I couldn't say because I didn't pay much attention to it, and lots of times we worked half hours and fifteen minutes and different times, and we didn't know exactly just what we had coming within maybe a dollar or two, and it wasn't made out like it would be out at Kaiser's. It's all itemized there and it shows what they took out—if you earned \$78.00 they took out 78 cents. But this is just a check made out to me—if I had \$50.00 coming it's \$50.00 and it doesn't even show your State liability, and I just took it for granted, probably, they took it out. I wouldn't say because I don't know. [29]

Q. How were you paid—on a time basis?

A. Yes, we were paid by the hour.

Q. And at what rate?

A. Well, at first, the first year I think we got about 50 cents, 55. And the fall of 1942 we got 85 cents an hour.

Q. Do you have a record of all your earnings?

A. I have not, no.

Q. Well, it appears in this case in order to determine whether or not this warehouse constituted a terminal market, or whether the produce had been through a terminal market before your services were performed, it will be necessary to go more in detail into the operations of Albert Miller Company, and, therefore, I am going to send this file back to Chicago where they have their head office and instruct the referee in that office to take a deposition of that firm.

A. To get more of a definite on the earnings?

Q. Not only on the earnings, but on the manner in which they operate. Your information, although it is very enlightening, is not the definite information that is necessary in cases like this. So this will be forwarded to the referee in Chicago, and when he sets the deposition for hearing you will receive a copy of the notice. You are not required to be present, but you can if you want to, but when the distance is so great ordinarily the person doesn't appear. But you are given notice so that if you have anything that you want to bring to the referee's attention; even if you don't appear you can communicate with him by mail and possibly put in his mind some question that you wish to ask. [30]

(Off-the-record discussion.)

Q. We will consider this matter submitted, subject to the deposition being taken, which will be introduced into the record as an exhibit, and at that time the matter will be considered submitted for decision.

We have read the above transcript and certify that it is a true and complete record of the hearing.

Dated: April 9, 1946.

/s/ MARTIN TIEBURG,
Referee.

/s/ LILA B. SHAFER,
Hearing Reporter. [31]

Case No. 11-126

EXHIBITS

Claims File
Page No.

A—Letter to Social Security Board from Mr. McLean, dated April 17, 1944.....	38
B—Letter to Mr. McLean from Social Security Board, dated June 7, 1944.....	37
C—Letter to Social Security Board from Mr. McLean, dated September 2, 1944.....	36
D—Letter to Social Security Board from Mr. McLean, dated February 24, 1945.....	17
E—Copy of Letter to Mr. McLean from Social Security Board, dated March 6, 1945.....	16
F—Letter to Social Security Board from Mr. McLean, dated September 30, 1945.....	14
G—Copy of Letter to Mr. McLean from Social Security Board, dated October 12, 1945...	11
H—Application for Primary Insurance Benefits, dated October 22, 1945.....	9
I—Terminal Questionnaire, dated October 22, 1945	7
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K—Copy of Letter to Mr McLean from Social Security Board, dated November 19, 1945..	4
L—Depositions of Marie C. Buckholz and Louise Franden
M—Letter addressed to Mr. Martin Tieburg by Archie McLean, dated June 11, 1946.....	..

Case 11-126
Exhibit A

41-
Post 7914

APR 28 1944

San Francisco, Calif.
March 17-44
Social Security Board,
Washington, D.C.

If you have a
card of my social Security
number would you please
send them to me, also any
information you may have
on Social Security. If you
have no record please
advise me.

TO BE FILED

DATE: 4/28/44
Clerk: J. H. [unclear]
Unit: [unclear]

EXHIBIT A
CASE NO. 11-126

Social Security Number 38
8-18-1969. Age 63
Birth date, August 24-1880

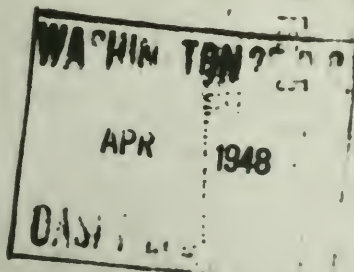


Photo

124 34

Home Address.

Teacher, T. M. Lewis,
114 - 71 - Miller
Barley
Idaho



APR 21 12 51 PM '48

171

Y

Case No. 11-126

Exhibit B

Federal Security Agency
Social Security Board
Washington

In Reply Refer to
File No. 14:WR:AE

Mr. Archie T. McLean,
c/o Hudson House,
Dormitory A, Room 302,
Vancouver, Washington.

Dear Mr. McLean:

Re: Account Number 518-18-1969

In your letter of April 17, 1944, you request information concerning your old-age and survivors insurance account. Due to the many articles which have recently been published encouraging workers to check on their old-age and survivors insurance accounts, we have experienced a tremendous increase in the volume of mail received in this office. We regret the delay in replying to your letter, but you may be assured that everything possible is being done to expedite the handling of all inquiries.

There is enclosed a Form OAR-7014 on which has been entered a statement of the wages credited to your account up to the present time. Please read both sides of the form carefully. An itemized statement of your wages is given below:

Employer	Period	Amount
Morrison-Knudsen Co.	7/1/42 - 9/30/42	\$ 484.00
Kaiser Co. Inc.	1/1/43 - 3/31/43	554.80
	4/1/43 - 6/30/43	824.40
	7/1/43 - 9/30/43	826.04
Grand Total.....		<u>\$2,689.24</u>

This wage statement may not include all of your wages for the last two completed quarters because of the time required to receive and record reported wages. [35]

We are enclosing Informational Service Circular 35, entitled, "Old-Age and Survivors Insurance for Workers and Their Families" and Informational Service Circular 1, entitled, "The Social Security Act." If you desire additional information, you may communicate with our field office, Old Post Office Building, Portland 4, Oregon. The representatives there will be glad to assist you.

Sincerely yours,

O. C. POGGE,
Director. [36]

photo

114-WR: AET neon 1 Mark
Sept-2-44

National Security Board

Baltimore p.c. 9/20/44
M-B

Your letter of 4/4/44
was received. There

is a mistake in my
records the number is
& name Archie F M Lean

place of my credits
the 91-0277066
82-0146120
so Morrison - 36-11482630

are correct but no
records for Alfred Miller
Chicago. 5734

Alfred Miller Co of Chicago
notable company operation
branches 11-126

2

Lerley Idaho. under
 management of
 Gen. T. ity. In the fall
 1941 I started work
 there in the warehouse
 tining potatoes, this was
 not November worked
 of Dec. and all of Nov 1941
 of Jan. T. it. March.
 April. Sept Oct and
 and some of Dec.
 2. I cannot give you
 amount of my earning.
 wage scale. for
 11 - was 55¢ per hour
 Jan T. it. March and
 all wage EXHIBIT See was
 5¢ per hour. 1942

CASE NO. 11-126

EXHIBIT

8.—
 page recd. for Sept
 20th. 2011. He was.
 80 per hour.

This company employed
 around 20 men and
 order that I could
 work I had to have
 social security card
 which I had. I showed
 it to them and they
 took my number.

Since working for them
 they have sold out in
 Burley. Headquarters are
 West, Miller Co. Chicago
 The Manager. Mr.
 Fritz is Burley & Dalis

If I can get this
 straightened out at



will be a T. of his. I
 me. for with the credits
 that Miller is owe
 me and what I
 accumulate by the
 time I reach 65 which
 is Aug 24 - 1945 - I
 will be able to qualify
 trusting you will do
 what you can to get
 this straightened out
 for me. Thanking you
 in advance. I remain

Yours Sincerely
 Archie F. M. Dean
 Vancouver.
 Wash.

Hudson House

CASE No. Room - 302

EXHIBIT C - Room - A

578-18-1969
 Turner, Adam
 Burley & others
 114 - H. - Miller

Case No. 11-126

Exhibit D

Vancouver, Wash.

Feb. 24, '45.

Social Security Board,
Baltimore,
Maryland.

Sometime during the year 1944 I wrote you in regards two my credits due me from Albert Miller Co., Burley Idaho, with headquarters in Chicago. I received notice from you that my case had been referred two the Portland Office. I received notice from Portland, filled out a blank form so that they could investigate my case, and later on received notice that the information that they had received from Chicago [41] had been forwarded two Baltimore, and I would receive notice at some future date, so far I have received no word from Baltimore.

I am anxious two get this matter fixed up so if you have any information on my case if you will kindly let me know, I will appreciate it very much and I thank you,

Yours Sincerely,

/s/ ARCHIE F. McLEAN.

Number 518-18-1969.

Vancouver, Wash.,

c/o Hudson House.

Dorm. A, Room 802.

Case No. 11-126
Exhibit E

Federal Security Agency
Social Security Board
Washington

March 6, 1945

Mr. Archie F. McLean,
Dormitory A, Room 302,
c/o Hudson House,
Vancouver, Washington.

Dear Mr. McLean:

Re: Account Number 518-18-1969

In your letter of February 24, 1945, you inquire regarding the progress of the investigation of your Old-Age and Survivors Insurance account.

We are now investigating your case in order to determine whether the services you performed for Albert Miller and Company constitute covered employment as defined by the Social Security Act. As soon as a decision is reached, you will be notified.

Sincerely yours,

O. C. POGGE,
Director.

cc: Coverage Policy Section.
14:WK:CW. [43]

Case No. 11-126

Exhibit F

Vancouver, Wash.

Sept. 30, '45.

Social Security Board,

Baltimore, Md.

Mr. A. C. Pogge.

Dear Sir:

Not hearing from you for so long, I am anxious to find out if you have reached a decision in regards to my credits due me from Albert Miller Co. Chicago.

As I will be leaving Wash. before long, would you be kind enough if you have any information to let me know as soon as possible and I thank you.

Sincerely yours,

/s/ ARCHIE McLEAN.

518-18-1969,

c/o Hudson House.

FEDERAL SECURITY AGENCY
SOCIAL SECURITY BOARD

WASHINGTON

2

October 12, 1945

45
14:CP:G

Account No.
518-18-1969

Mr. Archie McLean
c/o Hudson House
Vancouver, Washington

Dear Mr. McLean:

In your recent letter you inquired whether a decision has been reached relative to your employment for Albert Miller and Company, Chicago, Illinois.

We have determined that your employment for Albert Miller and Company is excepted from employment as agricultural labor by section 209(b)(1) of the Social Security Act as amended. That section excepts from employment services performed in the employ of any person in connection with the handling, planting, drying, packing, packaging, processing, etc. of fruits and vegetables, provided such services are performed as an incident to the preparation of such fruits or vegetables for market. Your services as a sorter come within this definition. Therefore, wages received for this employment cannot be credited to your account.

If you disagree with the determination you may request a reconsideration by the Bureau of Old-Age and Survivors Insurance or that a hearing be held by a referee of the Social Security Board. The request for a hearing should be made promptly and must be filed within six months from this date.

If you have any questions as to what you should do in order to obtain further action or consideration, call at or write to our field office located in the Old Post Office Building, Portland, Oregon.

Sincerely yours,

O. C. Pegge
Director

CASE NO. 114426

EXHIBIT G

SEARCHED	INDEXED	DATE	SEARCHED	INDEXED	DATE
14/10/45	14/10/45	14/10/45	14/10/45	14/10/45	14/10/45
14/10/45	14/10/45	14/10/45	14/10/45	14/10/45	14/10/45
14/10/45	14/10/45	14/10/45	14/10/45	14/10/45	14/10/45

OCT 12 1945

FILE COPY

Please place
in W. H. Hall
C. H. Hall
W. H. Hall
C. H. Hall

Case No. 11-126

Exhibit H

(All items on this form requiring an answer must be answered or marked "Unknown.")

It Is Not Necessary to Employ Anyone to Assist You in Preparing Your Claim. If You Need Assistance Call at or Write to the Nearest Office of the Social Security Board.

APPLICATION FOR WAGE EARNER'S PRIMARY INSURANCE BENEFITS

Notice—Any false statement in this application or misrepresentation relative thereto is a violation of the law and is punishable as such.

I, Archie F. McLean, No. 518-18-1969, hereby make application for the primary insurance benefits payable under the provisions of Title II of the Social Security Act, as amended.

1. I was born: Month—August Day—24 Year—1880.

Place: Smiths Falls, Ontario, Canada.

2. I worked in employment covered by the Social Security Act, as amended, for the following employers during the 1-year period just before the date this application is signed:

Name of Employer: Kaiser Co., Inc.

Address of Employer: Vancouver, Wash.

Work Began: Month — Year —.

Work Ended: Month — Year—. Still employed.

3. State whether you are single, married, widowed, or divorced—married.

4. If married, state your wife's maiden name, age, and date of birth, or your husband's name, age, and date of birth. Name—Margarett Lee. Age—54. Date of birth—1-9-1891.

5. Have you any children, including stepchildren and legally adopted children, under 18 years of age and unmarried? Yes. If so, how many? I.

6. Have you previously filed an application for any benefits under Title II of the Social Security Act? No. If so, state the name under which the application was filed, the approximate date filed, and the place where filed. [46]

Benefits are not payable for any month in which you work for wages of more than \$14.99 a month in employment covered by the Social Security Act.

7. (a) Are you now working for wages of more than \$14.99 a month in employment covered by the Social Security Act? Yes. (If in doubt, consult the nearest office of the Social Security Board.)

(b) Have you worked in the present month, before execution of this application, for wages of more than \$14.99 in employment covered by the Social Security Act? Yes.

8. Do you agree to notify promptly the Social Security Board of any month in which you work for wages of more than \$14.99 in employment covered by the Social Security Act, and to return promptly any check received by you for benefits for such month? Yes.

9. Do you give the Board permission to contact your employer or former employers? Yes.

Remarks:

(This space may be used for explaining any answers to the questions. If more space is required, attach a separate sheet.)

Inactive freeze application.

I solemnly swear (or affirm) that the foregoing statements are true to the best of my knowledge, information, and belief.

Signature of applicant:

/s/ ARCHIE F. McLEAN.

Address: Hudson House,
Vancouver, Wash.

Subscribed and sworn to before me this 22nd day of October, 1945 at Portland, Multnomah, Oregon.

/s/ ETHEL E. RYDELL,
Claims Clerk. [47]

Case No. 11-126

Exhibit I

Federal Security Agency
Social Security Board

File: Archie F. McLean

S.S. Account No.: 518-18-1969

TERMINAL QUESTIONNAIRE

All Questions on This Form Should Be Answered
Except Those Crossed Out.

All answers should be full and complete and, if possible, supplemented by any relevant information in the possession of the person executing this form.

1. Give a detailed description of the business activities of the employer. Albert Miller & Co. purchased potatoes from farmers and paid for them in cash; then he held them in his warehouse, and resorted and repacked whatever was necessary, and sold the potatoes to retail dealers.

2. What commodities does it handle?
Potatoes.

3.a. What percentage of the commodities handled are obtained directly from farmers who produce them on their own farms? 90%.

b. What percentage of such commodities are obtained from other sources? 10%.

- c. What are the sources? Local dealers.
This was done only when potatoes were scarce and the employer was not able to get sufficient potatoes directly from the farmers.

4. State the radius or territory in miles from which the employer obtains the commodities handled. 40 miles.

5.a. Does the employer buy the commodities which it handles, or does it simply pack and market them for a certain fee? The employer bought the potatoes for cash.

b. If it handles the products for owners for a fee, give a detailed statement of the arrangement between the employer and the owners.

—

6. If some of the commodities are purchased what percentage of the total do they represent?

All. [48]

7. Are these commodities in their raw and natural state when they come to the employer?

Raw and natural state—yes.

8. State the nature and extent of any processing to which such commodities are subjected by the employer. Stored potatoes, resorted and re-packed some, and sold to dealers.

9. Give the average size of the shipments of commodities received by the employer. 2000 to 2500 sacks of potatoes.

10. Give the average size of the shipments of commodities which leave the employer's place of business. 1 carload.

11. Are the commodities shipped out by carload lots? Yes; also truck load.

12.a. State whether the commodities handled by the employer are shipped directly to markets in some other parts of the country.
Yes.

b. If so, give the names of the principal markets to which the commodities are shipped.
Chicago.

c. If not, give the percentage which is disposed of in some other manner, and a description of such manner of disposal.

13.a. Does the employer can any of the commodities which it handles? No.

b. If so, are the canning operations carried on in the building in which the raw products are packed? —

14.a. Did the employee render any services which are related in any way to the canning operations? —

b. If so, explain in detail. — [49]

15.a. Does the employer own or operate a farm?
No.

b. If so, indicate the portion of the employee's time spent on same.

16. Give a detailed description of the services rendered by the employee. Unloaded potatoes off trucks, dumped them in the warehouse, resorted, sized, repacked, potatoes, and reloaded the potatoes.

17. What portion of the employee's time during an average pay period, subsequent to December 31, 1939, was spent in supervising the services of others employed in the preparation of the commodities, such as:

a. handling,	0	f. planting,	0
b. drying,	0	g. packing,	0
c. packaging,	0	h. processing,	0
d. freezing,	0	i. grading,	0
e. storing,	0		

18. What portion of the employee's time during an average pay period, subsequent to December 31, 1939, was spent in the direct performance of services in preparation of the commodities, such as:

a. handling,	45%	f. planting,	
b. drying,		g. packing,	
c. packaging,		h. processing,	
d. freezing,		i. grading	55%
e. storing,			

19. If any of the above services were performed in a supervisory capacity, describe in detail the nature of the supervision. None.

20. What portion of the employee's time in an average pay period, subsequent to December 31, 1939, was devoted to:

a. Office work, None.

b. Supervision of office work of others,
None.

c. Maintenance and repair work during the
"off-season" (indicate period) None.

21. What portion of the employee's time was devoted to other activities? None. (Give a detailed description of such other activities.) [50]

22.a. Does the employer render any services to farmers such as advice on growing or harvesting? No.

b. If so, indicate the percentage of the employee's time spent in such work on the farms, —

This information is submitted for the use of the Social Security Board.

/s/ ARCHIE T. McLEAN,

Employee.

Hudson House,

Vancouver, Wash.

[Stamped]: Received Oct. 22, 1945. [51]

Case No. 11-126

Exhibit J

Federal Security Agency
Social Security Board

In the case of:

Archie F. McLean, Claimant and Wage Earner
Social Security Account No. 518-18-1969

Claim for:

Primary Insurance Benefits.

REQUEST FOR RECONSIDERATION

To the Social Security Board:

I disagree with the determination made on the above claim, and therefore request a reconsideration by the Bureau of Old-Age and Survivors Insurance.

Remarks:

(If you wish you may use this space for statement of reason for disagreement.)

I do not consider my employment for Albert Miller & Co. was agricultural labor inasmuch as my work was for a potato commission company and my duties were sorting and packing potatoes which had been purchased and paid for by the Albert Miller & Co.

[Stamped]: Received Oct. 22, 1945.

Date 10-22-45.

/s/ ARCHIE F. McLEAN,

Claimant,

Hudson House,

Vancouver, Wash. [52]

Case No. 11-126
Exhibit K

14:CP:C
Account No.
518-18-1969

Federal Security Agency
Social Security Board
Washington

November 19, 1945

Mr. Archie F. McLean,
Hudson House,
Vancouver, Washington.

Dear Mr. McLean:

This office has received the questionnaire executed in connection with your request for a reconsideration of our determination holding services performed by you in the handling and packing of potatoes purchased by Albert Miller & Company, Chicago, Illinois, to be "agricultural labor" and, therefore, excepted from "employment" for social security benefit purposes.

An examination of the additional information furnished, together with that previously submitted, fails to disclose any evidence which would permit this office to reverse its previous ruling.

Where fruits and vegetables are concerned, the Social Security Act, as amended, effective January 1, 1940, provides that the term "agricultural labor"

shall include among other things services performed in the handling, packing, packaging, processing and grading of such commodities. This exception to coverage under the Act, as amended, is not limited to services performed on a "farm" in the employ of the producer of the commodities, but also applies to services performed off a farm in the employ of commercial handlers purchasing fruits and vegetables provided the services are rendered as an incident to the preparation of such commodities for market and they have not been delivered to a "terminal market" for distribution for consumption.

It appears from the data submitted by you that Albert Miller & Company, which has its headquarters in Chicago, Illinois, purchased the potatoes from local producers in the area surrounding Burley, Idaho. Your services were performed in the branch warehouse of the concern at Burley. It is considered, therefore, that your services were performed in the handling, processing and grading of potatoes as an incident to the preparation of such commodity for market and prior to its delivery to a terminal market for distribution for consumption. Accordingly, your services for Albert Miller & Company constitute "agricultural labor" and are excepted from "employment" under the Social Security Act, as amended. [53]

In the event you still are not in agreement with this determination, you are entitled to a hearing before a Referee of the Social Security Board and

to appeal to the United States District Court if the decision after hearing should be against you. In case you wish a hearing you should communicate promptly and not later than three months from this date with our Field Office at Old Post Office Building, Portland, Oregon.

Sincerely yours,

O. C. POGGE,
Director.

cc—Portland, Oregon, Field Office

cc—Accounting Operations Division

Contested Wages Unit [54]

09:RO:VIII

450 Midland Bank Building,
Minneapolis 1, Minnesota,
May 13, 1946.

Mr. M. C. Buckholz,
Albert Miller & Company,
308 West Washington Street,
Chicago, Illinois.

Dear Mr. Buckholz:

Re: Case No. 11-126, Archie F. McLean,
Claimant, Wage Earner, Acct. No.
518-18-1969.

I have your letter of May 4, 1946, in regard to the above case, concerning which I informed you we would like to take a deposition on May 22 at 2:30 p.m. in my office at 188 West Randolph Street, Chicago.

The data which you sent about the amounts paid the claimant are appreciated, but this does not obviate the necessity for taking the deposition. The purpose of the deposition is to establish whether the employment is excepted under section 209(b)(1) of the Act, and as coming under the definition of "agricultural labor" given in section 209(1)(4).

I trust you can make arrangements to be present at the time I have indicated. Thanking you for your cooperation, I am,

Very truly yours,

OSCAR M. SULLIVAN,
Referee. [55]

09:RO:VIII

450 Midland Bank Bldg.,
Minneapolis 1, Minn.,
May 3, 1946.

Albert Miller & Co.,
308 West Washington Street,
Chicago, Illinois.
Attention: Mr. M. C. Buckholz.

Dear Mr. Buckholz:

Re: Case No. 11-126, Archie F. McLean,
Claimant, Wage Earner, Aect. No.
518-18-1969.

I have been asked by the referee in Region XII, the Pacific Coast Region, to secure your deposition in connection with the case of Archie F. McLean, who is appealing with respect to certain services rendered by him for Albert Miller & Company in their warehouse at Burley, Idaho, in the period November, 1941, to some time in May, 1942. The main question at issue seems to be whether his services were excepted from "employment" by section 209(b)(1) of the amended Social Security Act.

I am going to be in Chicago on May 22, 1946, and would like to take your deposition at 2:30 p.m., in my office located at Room 2200, 188 West Randolph Street Building, Chicago, Illinois.

Please notify me of your willingness to attend at this time. It might be some time before I will

return to Chicago again, and so I would appreciate it if you would attend so that we can get this matter straightened out.

Very truly yours,

OSCAR M. SULLIVAN,
Referee. [56]

Federal Security Agency
Social Security Board

Office of Appeals Council
Case No. 11-126

In the case of:

Archie F. McLean, Claimant and Wage Earner
Social Security Account No. 518-18-1969

Claim for:

Primary Insurance Benefits.

NOTICE OF TAKING DEPOSITION

To: Mr. Archie F. McLean,
114 North Miller,
Burley, Idaho.

The deposition of Mr. M. C. Buckholz of Albert Miller & Company, will be taken on the 22nd day of May, 1946, at 2:30 p.m. o'clock, in Room 2200 of the 188 West Randolph Street Building, Chicago, Illinois.

This deposition, when completed, may be introduced in the above case as evidence. You have the right to be present when the deposition is taken, but you are not required to attend.

Date: May 3, 1946.

OSCAR M. SULLIVAN,
450 Midland Bank Bldg.,
Minneapolis 1, Minn. [57]

Case No. 11-126
Exhibit L

Federal Security Agency
Social Security Board
Office of Appeals Council
Case No. 11-126

In the case of:

Albert F. McLean, Claimant and Wage Earner
Social Security Account No. 518-18-1969

Claim for:

Primary Insurance Benefits.

DEPOSITIONS OF MARIE C. BUCKHOLZ
AND LOUISE FRANDEN

The following depositions of Marie C. Buckholz and Louise Franden of Albert Miller & Company, Chicago, Illinois, were taken on the 22nd day of May, 1946, at 2:30 p.m. in the Referee's Office,

Chicago, Illinois, before Oscar M. Sullivan, Referee. Notice of the time and place of taking the deposition was given to all parties in the above case. Archie F. McLean, the claimant, was not present at the taking of the deposition nor was he represented by counsel.

MARIE C. BUCKHOLZ

being first duly sworn, testified as follows:

Examination by Oscar M. Sullivan, Referee:

Q. Give your name and address to the reporter, please.

A. Marie C. Buckholz, 308 West Washington Street, Chicago 6, Illinois.

Q. What is your occupation?

A. I am the assistant secretary of Albert Miller & Company. [58]

Q. As such are you familiar with the operations of the company? A. Yes, I am.

Q. And its employment policies? A. Yes.

Q. How long have you held this position?

A. Twenty-eight years.

Q. And do you have a warehouse or branch at Burley, Idaho?

A. We no longer have that warehouse there, but we did have it up to about two years ago.

Q. Now the questions I will ask relate to the alleged services of one Archie F. McLean, at the warehouse in Burley, Idaho, in 1941 and 1942. How was this warehouse operated during the period in question?

A. Well, the potatoes were purchased and brought to the warehouse for processing and preparing for market.

Q. Were the potatoes purchased from the farmer on the farm?

A. I believe they were purchased on the farm.

Q. You say that you think they were purchased on the farm?

A. They are brought direct from the farm to the warehouse.

Q. Who brought them to the warehouse? Did your trucks or the farmers?

A. Both our trucks and the farmers. Of course, I didn't work right out there at the warehouse, and so I don't know what the procedure there was. It is my understanding that the potatoes were brought to the warehouse and sacked and prepared for sale.

Q. Who brought them to the warehouse? Did the farmers or [59] did your own trucks?

A. I can't answer that.

Q. What was done with them at the warehouse?

A. Well, they are stored, graded, packaged and the usual procedure of preparing them for sale.

Q. Then what was done with them from the Warehouse in Burley?

A. Well, they are put in loaded cars and sold. Of course, we sell them from the Chicago office here and they are shipped out from Burley.

Q. The sale is made here, but they were shipped from the warehouse to whatever point that they were bought?

A. That's right.

Q. And they were not taken to some other market for sale?

A. As far as I know, they were sold to customers all over the country in carload lots.

Q. They were sold in carload lots?

A. Yes, in carload lots.

Q. I want to go over with you some of the testimony of Mr. McLean in his hearing on March 26, 1946, at Burley. On page two of the transcript, he was asked, "Where did you perform your services," and he answered, "In the warehouse." He was asked, "What kind of work were you doing," and he said, "Well, we were sorting potatoes." Then a little farther on he was asked, "Now, these particular potatoes that you worked on, had they been handled by any other concern other than the grower that grew those potatoes previous to the time they came to this warehouse," and he answered, "Yes, yes, they had." Then he was asked, "And what condition were they in when you worked on them? Were they in the same condition [60] in which the grower had delivered them," and he answered, "These potatoes were bought by Albert Miller from the grower and they sent a crew out and sorted them U. S. No. 1 and No. 2." Then he was asked, "Where did they send the crew to," and he answered, "Out to the farmer's cellar." He was asked, "Were you——," and he answered, "No, I didn't have anything to do with that. Albert Miller handles the potatoes different from most of the dealers. The big per cent sends a crew out and sorts them

and then they haul them in and put them on the cars. But Albert Miller was a different outfit. They went out here to the country and bought these potatoes U. S. No. 1 and No. 2 in the farmer's cellar, and paid him for them No. 1 and No. 2. They belonged to Albert Miller. They were out of the hands of the grower entirely. Then Albert Miller brings them into this warehouse where I worked, run them through the washer, sorts them, some of them in 100-pound sacks, and the big ones, the 8- and 10-ounces, put those in little bags, most of them 10-pound bags, some 25. They run them through this washer and washed them, and that's the work that I done. They are out of the hands of the grower entirely. They are in the hands of the speculator. Not only that, but in the fall of the year they had a big warehouse that would hold probably 50,000 sacks in the basement, and they went out to the farmers and bought these potatoes and paid for them." What comment have you on that?

A. I don't know what they did, not having worked out in the warehouse. I wouldn't know anything about that. [61]

Q. Then he was asked, "When did they pay for the potatoes," and he answered, "A good many times before they even left the cellar. Sometimes they left them maybe a week or so, and a farmer maybe would come in and wanted his money and they just paid for them. These potatoes in the fall of the year they done the same thing with them they done with these we sorted. They sorted them in the country and brought them in and sorted

them in the warehouse, and a lot of these potatoes stayed in that warehouse till spring, and we had to sort them again. Those potatoes was ready for the market when they were sorted out here in the country. They were U. S. No. 1 and U. S. No. 2. Most of the 2's we didn't have to do much to them because they didn't put them in the bags so much." Have you any comment on that?

A. When a man buys a carload of potatoes, he specifies whether he wants No. 1's or No. 2's. If the potatoes are in the warehouse any length of time, they certainly would have to be gone over.

Q. He was asked on page four, "From Burley where would they be shipped," and he answered, "Their head office is in Chicago, you see, and they would get their wires from Chicago to this local here, and maybe they wanted some potatoes in Oklahoma or Texas or some place, and they were billed from here to that destination." What comment have you on that?

A. We wire them instructions where to send them. [62]

Q. He was asked, "Did they store a great part of the potatoes that went through the firm here in their Burley warehouse," and he answered, "No, they just filled it in the fall of the year, probably 50,000 sacks or something like that, and during the wintertime bought these potatoes from the farmer, and they resorted, washed them and resorted and sized them in order to get more money out of the potatoes."

A. I couldn't answer that.

The Referee: I will excuse you for a few minutes and call this other lady.

LOUISE FRANDEN

being duly sworn, testified as follows:

Examination by Oscar M. Sullivan, Referee:

Q. Give your name and address to the reporter, please.

A. Louise Franden, 7316 North Lowry, Chicago, Illinois.

Q. Miss Franden, what is your occupation?

A. I am a bookkeeper.

Q. For what concern?

A. Albert Miller and Company.

Q. How long have you been with the company?

A. Seventeen years.

Q. As such are you familiar with or have you had any experience with the plan under which the warehouse at Burley, Idaho, was conducted?

A. Generally speaking, yes. I was out there for nine months.

Q. How long ago was that?

A. Three years ago.

Q. I think I'll take you over some of the points in the [63] transcript. I will start with page two, at the bottom. Mr. McLean has previously testified that Albert Miller had bought the potatoes from the grower and had sent out a crew to sort the potatoes out U. S. No. 1 and No. 2, and on being asked whether he was with the crew he answered, "No,

I didn't have anything to do with that. Albert Miller handles the potatoes different from most of the dealers. The big per cent sends a crew out and sorts them and they haul them in and put them on the cars. But Albert Miller was a different outfit. They went out here to the country and bought these potatoes U. S. No. 1 and No. 2 in the farmer's cellar and paid him for them No. 1 and No. 2. They belonged to Albert Miller. They were out of the hands of the grower entirely. Then Albert Miller brings them in to this warehouse where I worked, run them through the washer, sorts them and re-packs them, some of them in 100-pound sacks, and the big ones, the 8 and 10 ounces, put those in little bags, most of them 10-pound bags, some 25. They run them through this washer and washed them, and that's the work that I done. They are out of the hands of the grower entirely." What do you say to that?

A. I don't know how other merchant potato buyers handle their potatoes, but we did hire crews to go out and sort potatoes in the cellar. They were sorted out there, and were loaded into cars when they came in. However, when we'd buy bulk potatoes, maybe we'd buy a cellar. We'd measure the cellar and say that we'd give them so much and they were brought into the [64] warehouse and sorted there.

Q. Now, let me see. You say that when they were sorted on the farm, they were brought in and put right in the cars? A. That's right.

Q. What was the warehouse used for?

A. The warehouse was used for storage and sorting.

Q. And what potatoes did you bring in there?

A. It depended upon the time of year and the market. If the market was low, then they bring them in and store them in bulk bins. They weren't sacked or sorted when they were bought from the farmer.

Q. These potatoes all belonged to the Miller Company when they were brought into the warehouse and the Miller Company then hired people to sort them, is that right?

A. That's right.

Q. Does this description of what he did sound right?

A. If he was hired right there at the warehouse to sort and package, he probably was the man who dumped them from the bag into the washer.

Q. And so the Miller Company had already paid the farmer for the potatoes, the farmer wasn't paid after you sorted them?

A. No, he was paid after they were sorted. In most instances he was paid after they were sorted according to the grade, U. S. No. 1 or No. 2.

Q. Then sometimes the farmer was paid in advance and sometimes he was paid afterwards, after they were sorted?

A. Yes.

Q. You wouldn't know what policy was followed in——

A. It [65] depended upon how the farmer wanted to sell them. If he wanted to sell them in

the cellar so much for the whole cellar, we'd pay him for this amount, but if he wanted them sorted and graded by us, we would pay him afterwards.

Q. I believe that's the nub of the whole thing, to what extent the man worked on potatoes that had already been bought by the Miller Company and to what extent his sorting was done in order to affect the price the farmer got afterwards.

A. I can see that, but that varied. We would buy them to sort and pay the farmer what we got out of sorting them.

Q. In some cases you paid after you had sorted them, the price depending upon how they sized up in the sorting and before you sold to any other party?

A. Oh, yes.

Q. On page three he was asked, "When did they pay for the potatoes," and he answered, "A good many times before they even left the cellar. Sometimes they left them maybe a week or so, and a farmer maybe would come in and wanted his money and they just paid for them. These potatoes in the fall of the year they done the same thing with them they done with these we sorted. They sorted them in the country and brought them in and stored them in the warehouse, and a lot of those potatoes stayed in that warehouse till spring, and we had to sort them again. These potatoes was ready for the market when they were sorted out here in the [66] country. They were U. S. No. 1 and U. S. No. 2. Most of the 2's we didn't have to do too much to them because they didn't put

them in the bags so much.” What comment have you on that?

A. I didn’t sack the potatoes or have much to do with that end of it, but to my knowledge they were sorted, well, as I said before, according to how the farmer wanted to sell them.

Q. Have you any basis for estimating what proportion of the potatoes were bought from the farmer on the farm before they were sorted with no understanding as to whether they were one grade or another, or what proportion of them were brought into the warehouse and the farmer was paid after they had been sorted U. S. No. 1 or No. 2, the price he was to receive depending upon this sorting or grading.

A. I am quite sure that most of them were paid after they were sorted in the warehouse, according to the grading made.

Q. On page four the referee asked, “Did they store a great part of the potatoes that went through the firm here in their Burley warehouse,” and he answered, “No, they just filled it in the fall of the year, probably 50,000 sacks or something like that, and during the wintertime bought these potatoes from the farmer and they resorted, washed them and resorted and sized them in order to get more money out of the potatoes.”

A. The customary way that they were handled was that the buyer would go out to the farm [67] and contract to buy potatoes at such and such a price, so much for No. 1’s and No. 2’s, and then

they would pay them for the No. 1's and No. 2's that they got out of the potatoes. That's my recollection of it.

Q. He was asked, "And when do they buy those potatoes they store," and he answered, "It just depends a good deal on the season and how they are keeping, or it might depend some on how urgent the demand was for them and whether they could buy potatoes in the country or not." Then he was asked, "Did they always keep a large supply of potatoes stored," and he answered, "In the two seasons—I worked the next fall, too. In the two seasons I worked there they filled the warehouse in the basement. I worked in the fall of 1942."

A. That's probably true because they did store a lot of potatoes in the warehouse.

Q. He was asked, "Where did you get your information that they purchased the potatoes from the grower," and he answered, "Before I worked in the warehouse I used to sort in the country. I worked down in this Eden country and Hansen. And sometimes in case it wasn't handy for the buyer to go down there and he kind of left it up to us for to buy these potatoes, so that if the farmer come to us and wanted to sell his potatoes he left it up to us to buy these potatoes so we could kind of keep ourselves busy in case he didn't come down there." Do you know anything about that?

A. No, I don't know anything about that. [68]

Q. Then he was asked, "Do you know whether or not the price that was paid to the farmer de-

pended upon the amount of salary that the Miller Company had to pay for cleaning and sorting, or was it just a flat price according to what the Miller Company could buy the potatoes for from the farmer," and he answered, "The way they buy potatoes here, they pay so much for these potatoes sorted U. S. No. 1 and No. 2, and the buyer pays for the sorting and the sacks and the transportation."

A. I think that's right. They pay the men who work an hourly wage, so much an hour. The Miller Company paid for the sorting.

Q. The Miller Company paid for the sorting, but did the farmer's price depend on how they were graded? A. Yes.

Q. He was asked, "Who brought the potatoes from the farmer's property to the warehouse?" and he answered, "Who hauled them in?" The referee said, "Yes," and he answered, "Well, they usually had some trucks working there for them." Then continuing on he said, "But lots of times they had to hire, you know, outside trucks."

A. We had a regular truck or two to use when the farmer didn't bring them in.

Q. "Did the farmers ever bring them in themselves," that's the next question, and he answered, "Well, the farmer didn't bring them in—what I mean, it wasn't in the contract for the farmer to bring them in, but some farmers owned trucks, understand, and [69] Albert Miller hired them to bring in potatoes." What comment have you on that?

A. I can't remember whether they paid the farmer so much when he hauled them in himself or not. I can't remember for sure. It seems to me they do in some instances, but I couldn't say positively.

Q. Now, he gives this account of how he happened to be hired. "At the time, the first year I went to work for Albert Miller—I worked for an Idaho Falls outfit down here during the harvest season, and when the harvest season was over they picked out their crews for to go into the country, and I being one of the older men they didn't pick me. And so I came up town along about 10 o'clock one morning and was sitting in the pool hall and this man, the manager of this Albert Miller Company, he came in, and he said to me 'I got a job over here for you if you want it.' And I said, 'I don't want it if it isn't steady and if it isn't under the coverage of the social security.' And he said, 'It's steady and it's under coverage.' So I said all right. And he said, 'Have you got your social security card,' and I said yes. He said, 'Go get it.' So I went down to the house to get it, but my wife had misplaced it, and when I come back I told him, and he wouldn't let me go to work till I did find it. So the next morning I found it and I went to work. The next year, in the fall of 1942, I went to work the day after Labor Day, and the foreman—the manager wasn't there but the foreman was—and the foreman come along and he said, 'Where's your social security card,' and I said,

‘Well, I didn’t [70] bring it. You’ve got a record of it.’ And he said, ‘You bring it in at noon.’ I said, ‘They’ve got my number and my record some place here.’ He said, ‘That don’t make any different; you bring it.’ So I brought it at noon.”

A. We did insist on having their social security number for purposes of income tax cross identification, so as to get their right name, number, etc.

Q. Is there anything further you would like to say, Mrs. Franden?

A. I don’t know of anything that I could say to help this thing along. I’m afraid to talk.

Q. There are two questions that need to be answered in this case. One is whether the services performed by Mr. McLean were performed incident to delivery to market, and the second one is whether this warehouse was a terminal market for distribution for consumption.

A. The terminal market is in Chicago. They are preparing for market in the warehouse.

Q. I understood that the testimony was that they were often shipped direct from the warehouse to the different customers all over the United States.

A. They were sold to jobbers elsewhere. You see, our sales were never direct to the consumer. You see we are carload potato distributors, and they were sold from there in carload lots to different dealers. Rather, they were sold from Chicago, but delivery was made from there.

The Referee: I think that will be all right now. Mrs. Buckholz, will take the stand again. [71]

MARIE C. BUCKHOLZ

having been previously sworn, testified as follows:
Examination by Oscar M. Sullivan, Referee:

Q. In the light of Miss Franden's testimony is there anything you would like to say?

A. Well, about those social security cards, it was essential that we have their correct account number. It was an instruction by the American Fruit and Vegetable Shipping that every employee was to show a social security number and so we were very insistent upon getting them.

Q. I am showing you a letter which bears your signature. This was sent to me and is on the letter head of the Albert Miller Company. Is that your signature? A. Yes.

Q. I will put this in evidence as Deposition Exhibit 1. Will you examine it and state whether this is a statement of what was paid to Archie McLean in those respective months for his services?

A. Yes, that's taken off of our payroll record.

Q. When any of these potatoes were sold from Burley—or rather shipped from the warehouse at Burley to different dealers all over the country, the sale was made here in Chicago, is that right?

A. Yes, the sale was made here, and we wired instructions to ship the potatoes to various places.

Q. And as far as you know, the testimony of Miss Franden [72] is correct, that the sorting was paid for by the company with the farmers customarily not paid until the potatoes had been graded and were paid according to that grading?

A. I think that's probably right.

The Referee: I think that's all. Is there anything else that you can think of?

LOUISE FRANDEN

having been previously sworn, testified as follows:
Examination by Oscar M. Sullivan, Referee:

Q. Miss Franden, you were at the Burley warehouse for nine months, were you not? A. Yes.

Q. Now, it is an important point to ascertain whether the farmer was customarily paid for the potatoes just as they were on the farm or whether he was in the great majority of cases paid on the basis of the sorting that was done in this warehouse. Can you clear that up?

A. I would say that it was the practice in most cases to pay after they were graded, because we have a sort of contract book and the buyer would go out to the farm and see the potatoes and tell the man that he would give him so much for his potatoes and that our price was so much for No. 1's and No. 2's. In most cases that was the way it was handled.

Q. And what about the hauling. Did the farmer do the hauling or the company?

A. That would depend upon the farmer. If he offered to haul them in and I think the majority of them [73] did offer. We had a few trucks that were used in case they didn't offer to bring them in.

Q. When the farmer hauled them in, was he given an extra allowance for doing this?

A. I don't remember in all cases, but I know

that in some cases they were. I can remember a few instances.

Q. Can you make an estimate as to the proportion of potatoes that were simply bought as is from the farmer and the proportion that were bought subject to grading?

A. I would say that it was a very small percentage that were bought as is because there is such a wide variation in the value of No. 1's and No. 2's. They naturally want to get the higher price. They were almost always paid on the basis of the grading.

Q. And the information you have given is based on your recollections while you were a bookkeeper at the warehouse in Burley?

A. Yes, and that has been over three years ago.

Q. Was it customary to give the employees of the company, these persons who did the sorting, to give them a statement as to what the deductions were, if any, on social security?

A. Yes, if we deducted, it was on the statement.

Q. Do you remember whether the employees who did the sorting and packaging had any deductions made?

A. No, they had no deductions for old-age benefits.

Q. Was the custom the same in the years previous to the time you went out there?

A. Yes, they were. [74]

Q. Was there a different bookkeeper there prior to the time you came there?

A. I can't remember who it was, but I think we

did have a man out there. Oh, yes, I believe it was Oscar Scherer.

Q. Do you know if he is still around there?

A. No, he is working for a packing house in Denver I believe.

Q. But you are pretty sure the system has always been the same. In other words, the payment to the farmer was based on the sorting of the potatoes, how they stood after they were sorted?

A. Yes, that's right.

The Referee: I think that will be all, Miss Franden. I thank both of you for coming.

(Whereupon, the deposition was closed at 3:30 p.m.)

We have read the foregoing and hereby certify that it is true and complete transcript of the questions and answers constituting the examination.

/s/ OSCAR M. SULLIVAN,
Referee.

/s/ EUGENE F. MILLER,
Reporter.

Case No. 11-126

Exhibit D-1

Albert Miller & Co.
Carlot Potato Distributors
Chicago, Illinois

May 4, 1946

Mr. Oscar M. Sullivan,
450 Midland Bank Building,
Minneapolis, 1, Minnesota.

Re: Case No. 11-126, Archie F. McLean,
Claimant, Wage Earner, Acct. No.
518-18-1969.

Dear Sir:

In reference to your letter of May 3rd, beg to advise that the writer has personally checked the records of Archie F. McLean and that he was employed as follows:

November, 1941	earnings	\$ 67.75
December, 1941	"	42.50
	Total for 1941	<hr/> \$110.25
January, 1942	earnings	\$ 87.25
February, 1942	"	62.00
March, 1942	"	108.08
April, 1942	"	114.40

May,	1942	”	26.95
September,	1942	”	133.12
October,	1942	”	264.76
November,	1942	”	92.22
			<hr/> \$888.78

Our interpretation of his employment were governed by amended Social Security Act, section 209(b)(4). We therefore made no deductions for Federal Old Age Benefits.

If there is any further information you should require do not hesitate to get in touch with us.

Yours truly,

ALBERT MILLER & CO.

By /s/ M. C. BUCKHOLZ.

[Stamped]: Received May 6, 1946. [76]

Case No. 11-126
Exhibit M

Burley, Idaho
June 9, '49.

Mr. Martin Tieburg.

Dear Sir:

Your letter of June 6 received and contents noted, in regards to my earnings, that is o.k.

In regards to the testimony given in regards to the way they bought and paid for the potatoes, it is not the way they were handled, only in very rare cases where the grade could not be made in the country due to dirty potatoes which had to be washed at the warehouse. In that case [77] their was very few handled that way.

As I stated at the hearing in Burley, the big bulk of the potatoes handled in Burley by Albert Miller Co., were sorted U. S. No. 1 and No. 2 in the farmers sellers, and were paid for on that basis. The No. 1 were hauled to the warehouse, resorted, washed, sized and a good many put in small sacks.

The evidence given at the hearing in Chicago, is not the true facts, and they know it.

If you need further proof that I am right, I can get plenty of proof that the way I stated is [79] the way the bulk of the potatoes were bought and paid for.

Sincerely yours,

/s/ ARCHIE McLEAN.

[Stamped]: Received June 13, 1946. [79]

[Endorsed]: No. 12523. United States Court of Appeals for the Ninth Circuit. Oscar Ewing, Federal Security Administrator, Appellant, vs. Archie F. McLean, Appellee. Supplemental Transcript of Record. Appeal from the United States District Court for the District of Idaho, Southern Division.

Filed June 19, 1950.

PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the
Ninth Circuit.